



POLICE DEPARTMENT

May 29, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Lieutenant William Doyle
Tax Registry No. 899165
5 Precinct
Disciplinary Case No. 81478/05

The above-named member of the Department appeared before me on January 23, 2008, and February 4, 2008, charged with the following:

1. Said Lieutenant William Doyle, assigned to the 13 Precinct, while off-duty, on or about November 21, 2005, at a location known to this Department, in the County of Richmond, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Lieutenant Doyle did intentionally place or attempt to place another person in fear of physical injury by displaying a deadly weapon and/or dangerous instrument to a person known to this Department, to wit: said Lieutenant did display a masonry hammer to a person known to this Department, and did intentionally place or attempt to place said person in fear of physical injury by threatening said person with same masonry hammer. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 -PUBLIC CONTACT-PROHIBITED CONDUCT

2. Said Lieutenant William Doyle, assigned to the 13 Precinct, while off duty, on or about November 21, 2005, at a location known to this Department, in the County of Richmond, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Lieutenant Doyle did intentionally place or attempt to place another person in fear of physical injury, by displaying a deadly weapon and/or dangerous instrument to a person known to this Department, to wit: said Lieutenant did brandish a firearm at a person known to the Department, and did intentionally place or attempt to place said person in fear of physical injury, by stating to said person known to the Department, in sum and substance, "Don't fuck with me, don't mess with me, or I'll end this now." *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 -PUBLIC CONTACT-PROHIBITED CONDUCT

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3. Said Lieutenant William Doyle, assigned to the 13 Precinct, on or about November 21, 2005, while off-duty, having been involved in an off-duty domestic incident at a location known to this Department, in the County of Richmond, did thereafter fail and neglect to report said incident, as required. *(As amended)*

P.G. 212-32, Page 1, Paragraphs 1 & 2 - OFF DUTY INCIDENTS

The Department was represented by Lisa McFadden, Esq., Department Advocate's Office, and the Respondent was represented by James Moschella, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial report has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on the evening of November 21, 2005, the Respondent and

██████████ engaged in a heated argument inside ██████████
██████████, which is within the confines of the 123 Precinct.

The Department's Case

The Department called Sergeants Thomas McNamara and Thomas Mooney, Lieutenants Brian Doherty and Gerald Rex, and Evan Stark as its witnesses.

Sergeant Thomas McNamara

McNamara testified that during November, 2005, he was assigned to the 123 Precinct and that on the evening of November 21, 2005, he was assigned as the patrol supervisor. He recalled that he and Police Officer DiFalco responded to the Respondent's residence soon after off-duty Police Officer Michael Troiano telephoned the 123 stationhouse. McNamara testified that he and DiFalco arrived at the Respondent's residence at about 11:00 p.m. When they arrived, the Respondent was not at home but [REDACTED] and [REDACTED] were present as was Officer Troiano, who identified himself as [REDACTED] and the Respondent's [REDACTED]. Officer Troiano stated that his [REDACTED] had telephoned him and that he had then called the 123 stationhouse on her behalf.

[REDACTED] told McNamara that starting at about 4:00 p.m. that day, she and the Respondent began arguing. She asserted that the Respondent was angry at her because she did not set out a fork for him for his lunch. She told McNamara that they had continued to argue into the evening and that, at about 9:45 p.m., the Respondent had displayed a tool with a wooden handle which [REDACTED] described to McNamara as "one-half hammer, one-half axe" and which had a sharp edge on one side. She also told McNamara that the Respondent had pointed his firearm at her and had told her, "Don't fuck with me." She told McNamara that when the Respondent left for work, he was in possession of the firearm that he had pointed at her.

Troiano found a tool of the type that [REDACTED] had described. When McNamara showed it to her and asked, "Is this the one?" she answered, "Yes." Police Officer DiFalco vouchered this tool describing it on the voucher form as a "hammer with brown

wooden handle.” [Department’s Exhibit (DX) 1]. [REDACTED] also told McNamara that the Respondent stored a firearm in the residence. This firearm was recovered, but when McNamara showed it to [REDACTED], she stated that it was not the firearm that the Respondent had pointed at her.

On cross-examination, McNamara acknowledged that his interview of [REDACTED]e was not tape-recorded and that he made no entries in his Activity Log regarding what she had told him. He recalled that [REDACTED] had told him that the Respondent was attempting to turn their kids against her. When McNamara was asked whether [REDACTED] had told him that the Respondent had specifically threatened her by saying, “I could kill you,” McNamara testified that, to the best of his present recollection, he could only recall that she had stated that the Respondent had used the word “kill.” McNamara observed no physical injuries to [REDACTED] and she did not claim that she had suffered any injury as a result of the Respondent’s actions.

Sergeant Thomas Mooney

Mooney testified that on November 22, 2005, three minutes after midnight, he conducted a tape-recorded interview of [REDACTED] (DX 2). At this interview, she described herself as “so upset” at what the Respondent had done to her that night. She stated that she arrived home from school between 4:00 and 4:30 p.m. The Respondent was in the basement and he was “very upset” with her because he had expected her to come home sooner because it was his birthday and because no party had been planned. At one point, “he took this hatchet off the hanging post that men have with their tools. And he had it in his hand and he’s coming at me shaking it like this, and he’s telling me

'I could kill right now.' He puts (it) on my head and he's pushing it and he says, 'I could just kill you right now, open up your head and kill you right now for what you're doing.'"

The Respondent then put the hatchet back on the hanging post.

She went upstairs and got busy cleaning the house "just trying to stay calm." The Respondent came upstairs and made dinner for himself and their two children. He told their two children, "I told your mother in the house. I want her out. Where do you want to live? Who do you want to stay with?" She described their children as "very scared, very, very frightened." Later on, he called her into the kitchen and they engaged in a conversation that was "mean and just nasty."

She stated that when she was in the kitchen and he was getting ready to leave for work, "he took the gun out of the holster, and he points it right at me and I turned my face because I didn't want to see the gun, and he puts it on my head, on the side of my head. I move back and he's talking to me. I can't even hear what he's saying anymore. And the gun's in the back of my head, and he's saying that, that he could kill me and he's saying other things. It's a blur, but I just remember the gun on the side of my head. I was so scared. I didn't know if he was going to pull the trigger or not." He told her, "It's your fault. This is what you do for my birthday. Isn't this great? I'll never forgive you for this. I'll never forget this." As he walked away, she told him, "You don't have a fork in your lunch." As she brought him a fork, "he unholsters his gun again and he points it right at my body." He told her, "Don't fuck with me, don't mess with me or I'll end it now." He gave her an I-dare-you look and then he put the gun back in the holster and left.

Mooney testified that on November 22, 2005, he prepared a Domestic Incident Report (DIR) based on what [REDACTED] had told him (DX 3). In the "Narrative of the Incident: (include results of investigation and basis for action taken)" portion of the report Mooney wrote:

Comp. alleged susp menaced her with a hammer touching it to her head and stating, "I could kill you right now." Comp alleged susp pointed firearm at her head stating, "I could kill you." Comp alleged susp pointed firearm at her torso, poking it against her ribs, stating, "Don't fuck with me I'll end it right now."

[REDACTED] told Mooney that she wanted to write the "Victim's Statement of Allegations" section of the DIR herself. She wrote:

Also, to be more precise, he used a pick-ax touching it to my head and stated, "I could kill you right now." He also pointed the firearm at my head, touching my head and stated "I will kill you, I will kill you." Later, he aimed the gun at my body and said "Don't fuck with me, don't mess with me or I'll end it right now." All the while the gun is pointed at me. (This handwritten "Victim's Statement of Allegations" is directly above her signature and the accompanying jurat that "false statements made herein are punishable as a Class A misdemeanor...")

Mooney watched as [REDACTED] read and signed as the "Deponent," a Criminal Court of the City of New York affidavit (DX 4). When Assistant District Attorney (ADA) Shapiro asked her if this affidavit was an accurate and truthful statement, she answered, "Yes." This affidavit states:

Deponent states that on 11/21/05 at about 1630 hours inside [REDACTED] defendant did hold a Masonry Hammer and press said hammer against deponent's head and stated in sum and substance: **I COULD KILL YOU RIGHT NOW AND OPEN UP YOUR HEAD**, causing deponent to reasonably fear physical injury.

Deponent further states that on 11/21/05 at about 2130 hours inside [REDACTED] defendant did point a handgun at the back of deponent's head and press said firearm against deponent's head and stated in sum and substance: **I WILL KILL YOU, I WILL KILL YOU**, causing deponent to reasonably fear physical injury.

Deponent further states that on 11/21/05 at about 2140 hours inside [REDACTED] defendant did point said handgun at deponent's body and did state in sum and substance: **DON'T FUCK WITH ME, I'LL END THIS NOW**, causing deponent to reasonably fear physical injury. (This charging affidavit contains an

accompanying jurat that "false statements made herein are punishable as a Class A misdemeanor...")

Mooney discussed with [REDACTED] the question of whether she should obtain an Order of Protection against the Respondent. Mooney then escorted her across the hall and introduced her to the clerks who process requests for Orders of Protection. Mooney later noticed that someone had placed in the case file a copy of an Order of Protection against the Respondent which was issued on November 22, 2005 (DX 5). This order was vacated on March 6, 2006, when the criminal charges against the Respondent were dismissed on the motion of Assistant District Attorney Shapiro.

On cross-examination, Mooney testified that he did not raise the issue of obtaining an Order of Protection against the Respondent, [REDACTED] did.

Lieutenant Brian Doherty

Doherty testified that after the criminal charges against the Respondent were dismissed on the motion of the District Attorney's office, the tool described as a "hammer with brown wooden handle," that Police Officer DiFalco had vouchered (DX 1) was destroyed on June 22, 2006.

Lieutenant Gerald Rex

Rex, who retired from the Department after 38 years of service, testified that during 2005 and 2006, he was assigned to the Manhattan South Investigations Unit. Rex testified that he investigated whether the Respondent had made a notification to the Department on November 21, 2005, and he ascertained that the Respondent had made no notifications regarding any incident occurring on that date.

Rex testified that on January 30, 2006, he met with Richmond County Assistant District Attorney Shapiro. Shapiro told Rex that [REDACTED] was not being cooperative regarding the Richmond County District Attorney's Office's prosecution of the Respondent and that she wanted to withdraw charges. Shapiro also told Rex that [REDACTED] had stated that the officers who had responded to the [REDACTED] on November 21, 2005, had "coerced" her into making a complaint against [REDACTED]. Rex testified that [REDACTED] refused to fill out an affirmation form withdrawing charges while she was at the District Attorney's office. Instead, [REDACTED] took the affirmation home with her. Rex recalled that Shapiro told him that it was highly unusual for a complainant to do this.

[REDACTED] later supplied Shapiro with a letter of withdrawal (RX A) which reads:

[REDACTED]. I cannot swear that I saw a gun -- there was no physical activity -- only arguing. At no time did I witness [REDACTED] with a gun in his hand and at no time did he ever threaten me with any weapon. This was a culmination of a series of arguments we both had that day that never resulted in any physical violence. At no time did I feel I was in danger or feel threatened with violence. I tried to explain this to people interviewing me at the D.A.'s office and repeatedly told them that their interpretation of the event as they reported it to me was incorrect and not based on fact. I wish to drop all proceedings and criminal complaints against [REDACTED]. I do not feel I [REDACTED] are in need of an order of protection against him.

Rex testified that Shapiro showed him this letter of withdrawal. When he read the sentence in the letter that begins with the word "because," the language sounded to him like "cop speak." Rex explained that by the term "cop speak" he meant language that police officers used but that a civilian would not normally use. Rex testified that he was aware that [REDACTED] was employed as a teacher.

Rex testified that as a result of [REDACTED]'s letter of withdrawal of charges, on March 6, 2006 the criminal charges against the Respondent were dismissed on motion of the District Attorney.

Rex testified that on May 29, 2006, he telephoned [REDACTED] and attempted to question her about the November 21, 2005 incident. [REDACTED] told him that she did not want to talk about the incident, and she further stated that "everything is fine." [REDACTED] also expressed concern for the Respondent because his [REDACTED]. Rex testified that the reason he called [REDACTED] on May 29, 2006, was because [REDACTED] had telephoned Inspector Lau regarding a different incident.

Rex testified that the next day, May 30, 2006, [REDACTED] called him at his office. He testified that she was upset and crying. She told him, "I wasn't honest with you yesterday." She then stated, "It's all true, everything I said in my original report." Rex testified that he "went through" the UF-49 that had been prepared regarding the November 21, 2005 incident with the complainant, and she confirmed all of the factual details contained in the report. [REDACTED] told him that she had withdrawn charges because, "I don't want to see my husband go to jail or lose his job." [REDACTED] specifically confirmed that the Respondent had threatened her with a masonry hammer and his service firearm, and that he had made "threats." She told Rex, "That is what had actually happened." She further told Rex that she was afraid of the Respondent and that she was going to "[REDACTED] leave."

Rex testified that the next day, May 31, 2006, [REDACTED] telephoned him again and told him that she had left the [REDACTED] and moved in with [REDACTED]. She also told him that she had contacted New Horizons. Rex testified that during this

conversation he attempted to get [REDACTED] to come into the Department trial room to testify against the Respondent. Rex confirmed that he told [REDACTED] that "we can only get help" for the Respondent if he is found guilty at a Department trial.

On cross-examination, after his recollection was refreshed by his worksheet, Rex confirmed that on May 31, 2006, [REDACTED] had not called him, he had telephoned her. Rex further confirmed that during their telephone conversation on May 29, 2006, when [REDACTED] had told him that "everything is okay," Rex had a copy of [REDACTED] letter of withdrawal in his file but that he did not go over the contents of this document with her. Rex testified that he took no notes during his telephone conversations with [REDACTED] but that he immediately typed worksheets after each conversation ended. He testified that he did not document all of the phone conversations with [REDACTED] after May 30, 2006.

Rex confirmed that [REDACTED] had asked him whether the Respondent could lose his job regarding the incident on November 21, 2005. Rex testified that he responded to [REDACTED] question by telling her that he did not believe the Respondent would lose his job based on her testimony about what he had done to her during the incident. After his recollection was refreshed by the transcript of the tape recording in evidence, Rex confirmed that when [REDACTED] asked him whether her husband could lose his job as a result of this incident, he told her, "No, no, I don't think so. I doubt it. They'll force him into some sort of counseling before they do that." When Rex was asked why he did not tape all of the telephone conversations that he had with [REDACTED] he responded that his unit had only one tape recorder.

Evan Stark

Stark is presently employed as an Associate Professor at Rutgers University. Based on his educational credentials, his professional and clinical experience and his publications as delineated on his resume (DX 8), Respondent's counsel offered no objection to his qualification as an expert in the field of domestic violence and his familiarity with the condition known as battered women's syndrome.

Stark testified that he has never interviewed [REDACTED] or the Respondent and that he has not listened to any tape-recorded interviews or reviewed the Department's investigative file regarding these charges.

Stark opined that it is far from unusual for a victim of domestic violence not to report to police that she had been victimized and that this is especially true where the abuser is a police officer because the victim may believe that fellow police officers will be unsympathetic and even disinclined to report misconduct committed by another officer. Stark also opined that it is common for a victim who becomes concerned that she and her children will suffer financially if the victimizer loses his job to refute her allegation that she had been victimized by her husband by denying or minimizing her own previous descriptions of her victimization and by refusing to cooperate in the prosecution of her husband. Stark testified that recantation could be consistent with and an indication of the condition known as battered women's syndrome.

Stark further testified that it is not unusual for a domestic abuse victim to express sympathy for her abuser and to even blame herself for her victimization, and that this type of psychological empathy is similar to the "Stockholm Syndrome" effect that is often observed in hostage victims.

Stark opined that a domestic violence victim's levels of fear of her abuser can vary and that it is not unusual for a domestic violence victim to later deny that an incident of domestic violence occurred by retracting her complaint when she is still living with, or in close physical proximity to, her abuser. However, once her level of fear is reduced due to physical separation from her abuser, the victim feels free to tell the truth about her victimization.

On cross-examination, Stark acknowledged that he has no personal knowledge of any specific incident involving [REDACTED] and the Respondent. He agreed that the condition known as battered women's syndrome can be the result of a myriad of causes. Stark also agreed that the characteristics that constitute battered women's syndrome are not caused by a single isolated incident but are the result of a series of events and are produced by a pattern of abusive behavior that occurs over a period of time.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent testified that he served as the domestic violence sergeant when he was assigned to the 120 Precinct. At the time this incident occurred, he was assigned to the 13 Precinct. As a result of this incident, he was suspended and then placed on modified assignment and transferred to the 5 Precinct. [REDACTED]
[REDACTED]. After this incident, he attended domestic violence classes.

He recalled that after [REDACTED] turned 50, in February, 2005, their "intimacy" as a couple "became reduced." He testified that [REDACTED] no longer wanted to go out, even just to see a movie, and that they began to "disconnect" as a couple. He learned that their family physician had started prescribing antidepressants for [REDACTED]. He attempted to discuss [REDACTED] depression with her. [REDACTED]
[REDACTED]

He testified that November 21, 2005, was his forty-seventh birthday. He was scheduled to work a midnight tour that day. [REDACTED], who is a teacher, was at school during the day. When he called her at school, he learned that she had not planned any family party that evening to celebrate his birthday. He told her, "I thought we were going to have a party for me." He testified that he was "hurt" that she had forgotten or ignored his birthday.

He recalled that they argued from the time she arrived home from school, just after 4:00 p.m., until he left for work at 10:00 p.m. that night. Because he was upset that she had ignored his birthday, he decided to "say what was on my mind." He recalled asking her, "What kind of marriage is this?" He also noted that she had not provided him with a fork for his meal. He testified that they both said "nasty" and "insulting" things to each other. He acknowledged that he told [REDACTED], "I would trade you in for a younger woman." [REDACTED]
[REDACTED]
[REDACTED]

He testified that he did not threaten his wife with a hammer and that he has never owned a masonry hammer. He testified that around 10:00 p.m., because he was getting

ready to leave to report for his tour of duty, he put on his gun belt. His holstered Glock service firearm was attached to the belt. He testified that because the belt "did ride up a certain amount," he withdrew his Glock from the holster and held it in his hand at about "shoulder level" as he adjusted his belt to insure that the belt was "sitting properly" on his waist. He then re-holstered his Glock. He testified that at no point did he point his Glock at [REDACTED]. Since [REDACTED] was standing to his right, he held the Glock with barrel pointed left across the front of his body.

He then left the residence and drove to work. He testified that he did not report this incident since it had consisted only of verbal arguing without any physical contact. He did not consider it a reportable incident.

On cross-examination, the Respondent testified that he did not ask [REDACTED] about whether she had made any birthday party plans for him prior to their telephone conversation on November 21, 2005. When the Respondent was asked whether during their argument he had uttered the words "end it," he answered, "Possibly."

The Respondent testified that he did not tell [REDACTED] to prepare or sign the affidavit in evidence (RX A). He testified that she did this on her own.

He testified that he did not mention that [REDACTED] [REDACTED] when he was questioned in his official Department interview because he did not believe that the fact that [REDACTED] "was Lieutenant Rex's business." The Respondent acknowledged that at his official Department interview he had stated that [REDACTED] "ran away" after previous face-to-face arguments.

FINDINGS AND ANALYSIS

It is charged that the Respondent intentionally placed, or attempted to place, [REDACTED] in fear of physical injury by displaying a deadly weapon and/or dangerous instrument to her in that he displayed "a masonry hammer" and threatened her with this hammer and in that he brandished a firearm at her and told her, in sum and substance, "Don't fuck with me, don't mess with me, or I'll end this now." It is also charged that the Respondent, having been involved in an off-duty domestic incident [REDACTED], failed to report this incident.

I find the Respondent guilty because I credit the truthfulness of the statement [REDACTED] made to Sergeant McNamara shortly after this incident occurred. This hearsay statement is believable and highly probative of the charged misconduct because [REDACTED] promptly reported what the Respondent had said to her and done to her to someone [REDACTED] Officer Troiano (who immediately called the 123 Precinct which resulted in McNamara's response); because the specific facts contained in this statement are consistent with the facts contained in the statement she made when she was interviewed by Sergeant Mooney (DX 2); and because they are also consistent with what she told Lieutenant Rex during their conversation on May 30, 2006, in which [REDACTED] reconfirmed all of the facts that she had alleged in her original complaint.

Thus, the Department presented three experienced members of the service who each questioned [REDACTED] about his incident separately and each of them offered testimony that establishes that she offered a consistent version of what the Respondent had said and

done during the incident.¹ The detailed statements [REDACTED] made to these three members are also consistent with the factual statements she swore to in the DIR (DX3) and in the Criminal Court charging affidavit (DX 4). Also, I find that Stark, the Department's domestic violence expert, offered plausible explanations for why domestic violence victims, such as [REDACTED] often do not contact the police, why they often withdraw criminal charges against their abuser, and why they often express sympathy for their abusers, as [REDACTED] did here.

On the night this incident took place, [REDACTED] provided McNamara with a detailed, believable account of how the Respondent had escalated their heated verbal argument by threatening her and menacing her with a tool and with his service firearm. Although [REDACTED] did not personally call 911 or the 123 Precinct, she reached out for help and support by telephoning [REDACTED] Officer Troiano, immediately after this incident. The mere fact that he called the 123 Precinct on her behalf does not diminish the believability of what she told McNamara because Stark testified that it is not unusual for a victim to not report her victimization to police and that this is especially true where the abuser is a police officer because the victim believes that responding officers will likely be unsympathetic to her and disinclined to report misconduct committed by a fellow officer.

I find it significant that [REDACTED] wanted to complete the "Victim's Statement of Allegations" section of the DIR herself. Her anger over the fact that she had just been menaced and threatened by her husband is reflected in what she wrote and in her expressed desire to be "precise" in describing in detail what the Respondent had said to her and done to her. This handwritten "Victim's Statement of Allegations" is directly

¹ See McDonald v. Safir, 254 AD2d 234, 679 NYS2d 60 (1st Dept. 1998).

above her signature and the accompanying jurat that "false statements made herein are punishable as a Class A misdemeanor..."

I credit Sergeant Mooney's testimony that he was present when Assistant District Attorney (ADA) Shapiro asked [REDACTED] if the allegations she was making against the Respondent in the charging affidavit were the truth and that [REDACTED] responded affirmatively. This charging affidavit also contains an accompanying jurat that "false statements made herein are punishable as a Class A misdemeanor..." I also credit Sergeant Mooney's testimony that it was [REDACTED], not him, who brought up the subject of whether she should seek an Order of Protection against the Respondent and that, after he showed her where the clerk's office was, he had no further involvement regarding her application for an Order of Protection which she obtained on her own. If [REDACTED] was lying about what the Respondent had said to her and done to her, it is unlikely that she would have, on her own volition, gone out of her way to obtain an Order of Protection. The fact that she took the time to obtain an Order of Protection against the Respondent constitutes an independent action on her part which lends credence to her allegations against him.

I also credit Lieutenant Rex's testimony that on May 30, 2006, [REDACTED] confirmed everything that she had alleged to Sergeant McNamara on the night of the incident and everything that she had told Sergeant Mooney at her tape-recorded interview (DX 2). Respondent's counsel argued that [REDACTED] confirmation of her allegations to Lieutenant Rex on May 30, 2006, should be disregarded because [REDACTED] had previously told Lieutenant Rex that the officers who responded on the night of the incident had coerced her into filing a complaint against the Respondent.

However, Stark testified that it is not unusual for a domestic violence victim to deny her victimization where the victim is still living in close proximity to her abuser but that once her level of fear is reduced as a result of a physical separation from her abuser, the victim feels free to tell the truth about what happened to her. The record here establishes that at the time [REDACTED] told Lieutenant Rex that she had been coerced into filing a complaint against the Respondent, she was still living [REDACTED], whereas during their conversation on May 30, 2006, Jean told Lieutenant Rex that she would be moving out of the marital residence the next day. These facts are consistent with Stark's explanation that a domestic violence victim's levels of fear of her abuser can vary and that it is not unusual for a domestic violence victim to deny that an incident of domestic violence has occurred by retracting her complaint when she is still living with or in close physical proximity to her abuser but that when her level of fear is reduced as a result of physical separation from her abuser, the victim feels free to tell the truth.

As a result, I credit the truthfulness of [REDACTED]'s confirmation of her original allegations to Lieutenant Rex on May 30, 2006.

Also, although Lieutenant Rex candidly acknowledged that [REDACTED] had expressed concern about the Respondent because [REDACTED], the mere fact that she stated that she felt sorry for the Respondent does not diminish the believability of her statements inculcating him because Stark testified that it is not unusual for a domestic abuse victim to express sympathy for her abuser.

As to the believability of the statements she made in the withdrawal of charges affidavit she signed (RX A), I find it significant that [REDACTED] refused to fill out this withdrawal of charges form while she was present at the District Attorney's office and

instead took the form home with her. ADA Shapiro told Rex that it was highly unusual that a complainant who was supposedly withdrawing charges on her own volition would do this. If [REDACTED] was genuinely recanting her allegations of her own free will, it is likely that she would have simply have completed the form at the DA's office. That her recantation was not truly voluntary is also reflected by the language she wrote in the handwritten portion of this affidavit. I agree with Lieutenant Rex's testimony that the stilted language used in the handwritten comments contained in this affidavit lead to the suspicion that the words are not [REDACTED] own words and that she was coached by someone as to what to write and how to write it. The contrast between the formal language and tone of the handwritten comments contained in this affidavit and the simple, natural language that [REDACTED] used in the "Victim's Statement of Allegations" section of the DIR is glaring.

Lieutenant Rex also candidly testified that [REDACTED] expressed concern to him that her allegations could result in the Respondent losing his job. In this regard, I find it significant that Stark explained that it is extremely common for [REDACTED] of a victim who is concerned about the financial consequences of her complaint to herself and [REDACTED] [REDACTED] to later deny her victimization by completely refuting her own previous descriptions of her victimization and refusing to cooperate in the prosecution of [REDACTED] [REDACTED]

This is not a case where the Department's proof consists only of unsupported hearsay statements. The tool that [REDACTED] asserted the Respondent had menaced her with was recovered and vouchered. Also, significantly, in his own trial testimony, the Respondent corroborated most of what [REDACTED] told Sergeants McNamara and Mooney and most of

what she wrote in the "Victim's Statement of Allegations" section of the DIR. He acknowledged that they had argued about the lack of a celebration of his birthday and that fact that she had not provided him with a fork for his meal and that the argument was long and became nasty. He also admitted that he told her, "Don't fuck with me," that he also told her, "[REDACTED]," and that he may have simply said that he would "end it." He further acknowledged that while [REDACTED] was standing next to him, he withdrew his Glock from its holster and held it in his hand at about shoulder level. In short, the Respondent agreed with almost everything [REDACTED] had stated about this event except for her claim that he had menaced her with a pick-axe-type tool, her claim that he had pointed his firearm at her, her claim that he had stated that he would "kill" her, and her claim that when he stated that he would "end it" he had added the word "now."

Thus, the Respondent corroborated almost everything [REDACTED] asserted that he had said and done during this incident except for the wrongful words and actions that are the subject of these charges.

As to the Respondent's denial that he had pointed his firearm at [REDACTED], his explanation that he had to withdraw his firearm from its holster and raise it to shoulder level in order to adjust his gun belt so that it would sit on his waist properly, appears tailored to explain why [REDACTED] told McNamara that he had displayed his firearm inside the residence. Also, his extremely circumspect trial testimony that he could not possibly have menaced [REDACTED] with a "masonry hammer" because he has never owned a "masonry hammer," sounded disingenuous. The Respondent was fully aware [REDACTED] had described the tool she asserted he had menaced her with as a "hatchet" (in her tape-recorded interview) and as a "pick-ax" (in the DIR). Thus, the Respondent's simple

denial that he had access to a masonry hammer appeared to be neatly tailored to match the specific description of the tool contained in the charge.²

The Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on April 30, 1991. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found guilty of intentionally placing [REDACTED] in fear of physical injury in that he displayed and threatened her with a dangerous instrument, a pick axe-type hammer, and in that he pointed a deadly weapon, his service firearm, at her and stated, in sum and substance, "Don't fuck with me, don't mess with me, or I'll end this now." The Respondent has also been found guilty of having failed to report this off-duty incident as required.

The Assistant Department Advocate recommended that the Respondent be immediately dismissed from the Department. However, this Respondent has never previously even been accused of engaging in this or any other type of misconduct, while on duty or off duty. Thus, his misconduct here appears to be the result of a highly unusual situation which constituted an extreme aberration from his normal conduct.

² It is unclear why the tool the Respondent used to menace his wife is referred to in the Specification as a "masonry hammer" since [REDACTED] used this term to describe the tool.

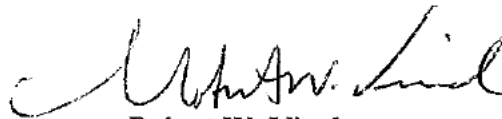
Moreover, it is not disputed that the Respondent and [REDACTED] no longer live together [REDACTED]
[REDACTED]

In light of these facts and in consideration of the fact that the Respondent has never previously been the subject of disciplinary charges during his 17 years of service, I believe a penalty short of immediate separation is warranted. Nonetheless, imposition of a one year period of dismissal probation is appropriate here.

Therefore, I recommend that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

The Respondent was suspended from November 22, 2006 to December 25, 2005. It is further recommended that the Respondent be required to forfeit all of the days he served on pre-trial suspension regarding this incident and that he forfeit an additional 30 suspension days as a penalty regarding the misconduct he has been found guilty of for a total penalty forfeiture of 60 suspension days.

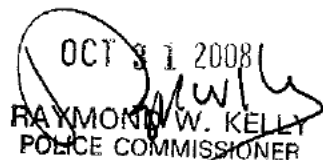
Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner - Trials

APPROVED

OCT 31 2008

RAYMOND W. KELLY
POLICE COMMISSIONER